

The sixth Office Action required Replacement Drawings as set forth in Section 4 of the Office Action. Applicant has sent in Replacement Drawings in a separate mailing. The date the Replacement Drawings were mailed in was January 18th, 2005.

The sixth Office Action rejected claims 1, 5, 10 and 36 under 35 U.S.C. §112, second paragraph, as being indefinite. Applicant has amended claims 1, 5, 10 and 36 to rectify the antecedent basis problems cited in the sixth Office Action. Specifically:

Claim 1 has been amended to clarify that *weighting factor* is from *the entered set of weighting factors*.

Claim 5 has been amended to change the *merchant data weight result* to the *respective merchant data weight resultant value*.

Claim 10 has been amended to move the *means for applying screening factors* after the *means for generating a ranking* to provide proper antecedent basis for *the ranking*.

Claim 36 has been amended to change the *retrieved merchant information* to the *retrieved merchant comparison information*, which has proper antecedent basis.

The sixth Office Action, mailed on February 16th, 2005, rejected claims 1-7, 10-16, 20-23, 27, 28, 30 and 36-47 under 35 U.S.C. §103 as being unpatentable. Claims 1-3, 5-8, 10-18, 20-48 and 50-55 were rejected over BizRate.com in view of Geller [USP 6,236,990 B1].

Applicant respectfully contends that the claimed invention is patentable over BizRate.com and the other references cited in the fifth Office Action.

THE GELLER REFERENCE

The Geller patent discloses a system for selecting a merchant to determine whether the merchant has what the consumer is seeking. As nearly all ecommerce systems seek to provide information on merchants, the actual workings of the system are the important part of the reference. Geller's system relies upon experts who have entered information about what they perceive a consumer would find relevant, and the consumer may access the information

obtained from the expert to aid their product selection. In effect, Geller is a “knowledgebase” system. Knowledgebase systems like Geller work on the principle that someone else knows better than you do about what your needs are and what importance you “should” place on purchasing decisions. Knowledgebase systems like Geller place a strong emphasis on “expert” opinions. As such, by intent and design they, and Geller, limit the consumer’s ability to access actual data, and instead funnel the consumer toward the expert’s opinion on their needs, priorities and preferences. Knowledgebase systems store the expert’s knowledge, which may then be retrieved by others without relying on additional input from the expert. Nothing could be further from the intent and purpose of the current invention as claimed, and a precise comparison of Geller with the claims makes that apparent.

The intent and purpose of Geller as a knowledgebase system is made clear in Geller: “[b]ecause experts test and evaluate the products, and the preference of the user is used to rank each product in a category, the user is able to see product rankings that are tailored to his or her requirements without requiring the user to learn how to operate multiple competing products...” (Column 2, lines 38-42). Additionally, “...products within each category are evaluated by experts who can compare each of the products and how they rate with respect to each attribute.” “Each of the products in each category is rated for compliance with the attributes identified...” (Geller Col. 2, lines 20-25.) Thus, in Geller the evaluation rating represents the expert’s opinion on what the consumer needs or wants, and does not correspond to actual information on the product.

Once the expert’s knowledge in the form of product evaluation ratings is stored in the Geller knowledgebase system, consumers may make queries against the expert’s knowledge by “selecting” an answer to a question (and not by actually entering a weight). This answer is converted by Geller into a weight having discrete, predetermined values. “*The actual responses the user selects* for each attribute *are received* by administration 226 *which stores* in relevance storage 216 a representation of the actual responses, such as *the weight corresponding to the response selected* and an indication or an association of the response with the attribute.” (Geller Col. 4, lines 34-39, emphasis added.) The weights are then

multiplied against the product evaluation ratings. “[T]he score is calculated using the following procedure: for each product in the category, *the weight for each attribute is multiplied by the evaluation rating* for such attribute for such product to produce an interim result. The sum of all such interim results for each product in the category is calculated to produce a product score.” (Geller Col. 4, lines 49-54, emphasis added.) The evaluation ratings indicate a “...*score that describes how well one or more products fulfills the attribute or question* associated with the attribute” according to the expert (Geller Col. 8, lines 13-14, emphasis added.)

It is worth noting that in all of Geller never has the consumer identified the criteria to be used in evaluating a merchant, nor has the consumer entered a weight quantifying what they deem relevant to a purchasing decision or demonstrating what their preference would be among categories or factors given the reasons behind their purchase in the first place. Consumers are limited to answering predetermined questions by selecting predetermined answers to pre-selected questions developed by company “experts” to which they – the experts – apply weights in an attempt to constrain the consumer expression. Nowhere within Geller is there any mention of applying an entered weight to non-expert ratings.

One of ordinary skill in the art referencing Geller would recognize that Geller discloses matching the knowledge of one person (an expert) with the preferences of a second person, through the use of a computer system, to select products. Geller accomplishes this by multiplying a weight by a product evaluation rating. Geller takes a number representing an answer selected from a predetermined list entered by one person, which Geller terms a “weight,” and then multiplies it by a number entered by a second person, to try to match the desires of a first person based upon the knowledge of a second person. The answers of one person, the user, are converted into an integer between 1 and 4. The knowledge of the second person is entered as a number, which expresses the “expert’s” opinion on how well the product fits a desired attribute or answers a question.

What Geller does not disclose, is using a weighting system to compare data on merchants. This is a critical distinction with the claimed invention, as the claimed invention

seeks to cut out the middlemen of experts and survey respondents to allow a consumer to go directly to data to evaluate merchants. This is as subtle, yet as powerful, as the difference between a potential car buyer asking a neighbor “Bob, what dealer do you think I should buy my car from?” and the potential car buyer comparing the most important factors to the car buyer, such as offered price, available inventory, service facilities, and distance from the car buyer’s place of work, and deciding which dealer to purchase from based upon evaluation of facts on factors of importance to the car buyer. While the neighbor could specify the right dealership to match the car buyer’s preferences, and the neighbor may even ask a question to find out what is of importance, there is a qualitative difference between asking an opinion of another person who will provide their opinion of your needs and preferences, and actually being able to check facts and weight the importance of facts to make an objective determination according to a buyer’s own priorities. One of ordinary skill in the art would understand Geller for what it is: a system of asking the opinion of another person. One of ordinary skill in the art referencing Geller would read Geller to teach using opinion information, in the form of expert “evaluation ratings,” and not using actual data to evaluate a merchant. One of ordinary skill in the art referencing Geller would understand that Geller teaches away from the use of merchant data for comparing merchants, and instead teaches in the direction of reliance on and use of subjective information (similar in that respect to BizRate.com’s teaching of the reliance on survey response data) to select products.

The present invention, as claimed, allows consumers to AVOID use of or reliance on opinion information (from experts or otherwise). As such, the present invention is contrary to the teachings of Geller and BizRate.com

To clarify this distinction over the Geller reference and the BizRate.com reference, the claims have been amended to specifically recite merchant data in a manner that could not be interpreted to cover survey information, opinion information, or “evaluation ratings.”

For example, Claim 1 has been amended to include “wherein the merchant comparison information data includes non-opinion data from at least two categories from: price category, product availability category, product inventory category, time to deliver

product category, payment terms category, payment method category, merchant creditworthiness category, and inventory category information” thus distinguishing the present claimed invention from the opinion systems of BizRate.com and Geller.

Similarly, claim 10 has been amended to specify that “the merchant comparison information specifying objective, non-opinion data on the specified product or the merchant offering the specified product” thus distinguishing the present claimed invention from the opinion systems of BizRate.com and Geller.

Claim 14 has been amended to point out that “the merchant data entry values specifying non-opinion data” thus distinguishing the present claimed invention from the opinion systems of BizRate.com and Geller.

Claim 36 has been amended to specify that “the merchant comparison information excluding opinion data or survey result data” thus distinguishing the present claimed invention from the opinion systems of BizRate.com and Geller.

Claim 39 has been amended to specify that “the retrieved merchant comparison information excludes information obtained from surveys or specifying the opinion of a person” thus distinguishing the present claimed invention from the opinion systems of BizRate.com and Geller.

Additionally, claims 1 and 14 has been amended to emphasize this distinction between consumer preferences and expert opinions, as well as non-opinion based and opinion-based data, by noting that when the consumer enters a set of weighting factors, “the entering occurs prior to receiving information related to a user specified product.” (claim 14, as amended) This further contrasts with Geller which asks questions after receiving information relating to a product of interest to the consumer.

The remaining claims currently pending in the present application all depend from claims 1, 10, 14, 36 and 39, and are therefore non-obvious in view of BizRate.com and Geller.

Geller itself is proof that this distinction between multiplying a weight against expert opinion information and multiplying a weight against some other value is a non-obvious distinction.

The U.S. Patent Office issued the Geller patent, despite considerable prior art in one area: the form of the Geller equation. The Geller patent discloses multiplying weights against evaluation ratings, on a category basis, which are then summed to obtain a score for the product. As a formula, the Geller system is in the form of:

$$\text{score} = W_1 \times R_1 + W_2 \times R_2 + W_3 \times R_3 + W_4 \times R_4 + \dots + W_n \times R_n$$

Where W_n is the weight for category n and R_n is the evaluation rating for category n . What is most interesting about this formulae is how prevalent it is in the prior art. This is simply a linear equation, well known in linear algebra. Applicant has not researched its precise origin, but this form of equation has been around for many years prior to the filing date of Geller.

As the equation of Geller is not novel, the meaning of the terms of the equation must have been the basis for allowance of the Geller patent by the U.S. Patent and Trademark Office. Geller took a well known formula and applied it in a manner that the U.S. Patent Office, evidently, found unique and non-obvious. Thus, as the Geller formula is not unique, only the meaning of the terms could be novel and non-obvious.

Comparing this principle of unique and non-obvious terms of an equation to the present Application, the unique aspect of the presently claimed invention is the application of weights to data of a merchant. As specified in the claims (as amended), data of a merchant specifically excludes opinion data and weights entered by a second person. Accordingly, the presently claimed invention is unique and non-obvious by rejecting the teachings of Geller and BizRate.com (which both teach the use of opinion information as the basis of comparison) in comparing merchant data, insofar as the presently claimed invention allows a consumer to control the importance of each category of merchant data in the weighting by

entering the weighting factors him- or herself (and in claims 1 and 14 enters the weighting factors prior to the query).

A comparison between the weights of Geller and weighting factors of the claimed language (prior to the current amendments) further emphasizes the distinction between the claimed invention and Geller. The Geller weights are not the same as weighting factors as claimed in the present invention. The Geller weights assign discrete numbers to answers given in response to questions about the importance of features of a product. The Geller weights do not change the importance of a category of information when evaluating a merchant, they are an answer to whether an aspect of a product is a consideration in selecting features of an IT product. A numerical weight corresponding to the importance of product features is different from a numerical weight that can change the relative importance an entire category of information may receive in comparing a merchant. One of ordinary skill in the art referencing Geller would read Geller to teach away from the use of numerical values to change the importance of a comparison of a merchant. The weights disclosed in Geller help consumers select features, and have no relevance to merchant information such as credit history, years in business or the availability of delivery within a specified time.

While the weights of Geller are not the same as the weighting factors of the presently claimed invention (they have a different meaning and significance), Geller's teaching of two weights from two people, multiplied against each other, to rank merchants teaches away from the present inventions use of data multiplied by user entered weights, is contrary to the claimed invention's application of user-entered weights to merchant dating in evaluating and ranking merchants.

THE BIZRATE REFERENCE

The sixth Office Action asserts that "BizRate further discloses a Customized Rating Option that allows a user to set his/her own weights for each of these ten aspects of shopping

and get a personally scored and sorted list of merchants.” As discussed above in connection with Geller, and as defined in the claims, not all uses of the term “weights” are equivalent to the claimed invention. The weighting factors of the present invention, as claimed, represent a percentage importance of a category or merchant information to be used in calculating a merchant ranking.

Page 11 of BizRate.com does not disclose entering the ability to change the importance of categories. In fact, page 11 has only once sentence referring to weights. This one sentence refers to a functional page of BizRate.com that the Office has never provided in any of the six Office Actions to date. Applicant contends that page 11 does not refer to entering values to change the importance of categories in the ranking, but only appears to do so with the perfect hindsight of already having seen the claimed invention. One of ordinary skill in the art, referencing page 11 of BizRate.com without having seen the present invention, would understand that a consumer may enter their own values on each of the 10 aspects, which would allow the proprietary BizRate.com system give a personalized ranking according to the weight each attribute achieves in the consumers own evaluation and the survey response information BizRate.com relies upon. Applicant respectfully points out that:

- nowhere within the BizRate.com citation is “weight” explicitly defined, used or illustrated.
- BizRate.com has explicitly stated its purpose is to showcase its proprietary technology on survey responses, and
- BizRate.com deliberately prevents consumers from knowing the method of calculating a merchant score or influencing the calculation of a merchant score.

Accordingly, the Office Action’s interpretation is not enabled and is contrary to the stated goals and teachings of BizRate.com. The interpretation consistent with the explicitly articulated goals and teachings of BizRate.com is that page 11 refers to another functional page of BizRate.com that allows some form of personal ranking based upon the values a

consumer enters, according to the proprietary methodology of BizRate.com, and that the entered values correspond to the values BizRate.com collects from survey respondents.

The meaning of “customized rating option” referred to on page 11 is most easily interpreted in the context of the surrounding text of page 11. The “customized rating option” referred to on page 11 described under general category **“3. Customize your search using “Sort” or “Filter” features.”** (emphasis added) This category description indicates any and all functions identified in this category are subsets of the sorting and filtering function – collected, graded, and scored by their experts through survey responses. This is readily evident in the first two options available to consumers (emphasis added in all citations):

“a) filtering our list of merchants to only those that have the features and capabilities you need; and

b) if only one aspect of shopping is particularly important to you, say 'Price' or 'On-time Delivery', you can use the pull-down menus to have the merchants ranked according to how they did on that dimension (instead of the default 'Overall Rating');”

And thus the third example is also bound in this way:

“c) if you are really adventurous, you should try the try the “Customized Rating” option off the pull-down ... This allows you to set your own weights for each of the ten aspects of shopping and get a personally scored and sorted list of merchants.”

In other words: the consumer is already inside the Bizrate system when he or she pulls down the “customized rating option”; and is not entering weights prior to a query. The “customized Rating” is a form of sorting and filtering of survey response information according to BizRate.com’s proprietary methodology, as indicated by the category descriptor and the surrounding text.

Given BizRate.com’s reliance on survey information (explained in detail in the RCE), even if the Office Action is correct in its interpretation of Page 11 of BizRate.com, one of ordinary skill in the art referencing BizRate.com would find BizRate.com to teach away from the claimed invention. BizRate.com specifically touts, as its reason for being, the display of its “proprietary” survey evaluation technology. What comes from this focus on displaying

survey response technology is a reliance on survey results in place of actual data on a merchant or its products. As stated above, the present invention, as claimed, allows the consumer to AVOID opinion data while comparing multiple attributes of a merchant. This approach of the claimed invention is contrary to the purpose and teachings of both BizRate.com and Geller.

CONCLUSION

None of the cited references, alone or in combination, teach or suggest the presently claimed invention to one of ordinary skill in the art. To the contrary, BizRate teaches away from the present invention by suggesting a proprietary methodology which is neither transparent nor alterable by using weights. The only use of the word “weight” in BizRate is in an unsupported statement (P. 11) on a page describing sorting and filtering of survey response information. Given BizRate’s teaching away from transparency and its reliance on proprietary methods to showcase their survey analysis technology one of ordinary skill in the art referencing BizRate would not consider the present invention obvious.

The Geller reference merely teaches applying weights to expert advice, in the form of answers to known questions, to guide purchasers in determining what an expert would recommend given their circumstances. Nothing within Geller teaches or suggests applying weights to non-opinion merchant data. To the contrary, the purpose of Geller is to allow consumers to harness expert opinions in their decision making. One of ordinary skill in the art referencing Geller would recognize Geller as teaching away from the claimed invention.

Nor is it obvious to one of ordinary skill in the art to take the teaching of Geller, which is to use filtering questions to obtain information about a user’s preferences, and remove the questions and answers (which are an essential feature of Geller) to apply the formulae of Geller to BizRate.com, especially when BizRate.com is based upon secret, proprietary methodology. The Office Actions contention that it is obvious to modify BizRate.com in view of Geller is to ignore the central teachings of both references.

Applicant respectfully requests that the art be recognized for what it really is, and the present Application be passed through to allowance.

Respectfully submitted,

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